

Before the
Administrative Hearing Commission
State of Missouri



RICHARD & CATHRYN JURINEK,)	
)	
Petitioner,)	
)	
vs.)	No. 14-0228 RI
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We grant the Director of Revenue’s motion for summary decision and dismiss the complaint because it was not timely filed.

Procedure

On February 14, 2014, Richard and Cathryn Jurinek (the “Jurineks”) filed a complaint appealing a final decision of the Director of Revenue (the “Director”) assessing income tax, additions to tax, and interest. The Director filed a motion for summary decision on February 28, 2014. We gave the Jurineks until March 18, 2014 to respond to the motion, but they did not do so.

This Commission may grant a motion for summary decision if the Director establishes facts that entitle him to a favorable decision and the Jurineks do not genuinely dispute those

facts.¹ Parties may establish facts by admissible evidence, including a pleading of the adverse party or other evidence admissible under the law.² We make the following findings of fact based on the pleadings and the authenticated business records accompanying the Director's motion.

Findings of Fact

1. The Director informed the Jurineks of his final decision to assess income tax, additions to tax, and statutory interest by letter dated December 20, 2013 (the "decision letter").

2. The final decision letter also advised that:

If you were adversely affected by this decision, you may appeal to the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri 65102-1557. To appeal, you must file a petition with the Administrative Hearing Commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Commission.

3. The Director mailed the decision letter to the Jurineks by certified mail on December 20, 2014.
4. In response to the decision letter, the Jurineks filed a complaint with this Commission on February 14, 2014.
5. February 14, 2014, was more than thirty days after December 20, 2014.

Conclusions of Law

The Director argues the Jurineks' complaint is untimely, and relies on § 621.050.1,³ which establishes the limitations period for this action:

¹1 CSR 15-3.446(5)(A). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

²1 CSR 15-3.446(5)(B).

³ All statutory references are to the 2000 version of the Missouri Revised Statutes unless otherwise noted.

Except as otherwise provided by law, any person or entity shall have the right to appeal to the administrative hearing commission from any finding, order, decision, assessment or additional assessment made by the director of revenue. Any person or entity who is a party to such a dispute shall be entitled to a hearing before the administrative hearing commission by the filing of a petition with the administrative hearing commission within thirty days after the decision of the director is placed in the United States mail or within thirty days after the decision is delivered, whichever is earlier[.]

The decision letter stated that any appeal must be filed with this Commission within thirty days of the date the Director's decision was mailed, or within thirty days of the date of its delivery, whichever is earlier. The decision letter was mailed on December 20, 2013, by certified mail. The evidence in this case establishes the Jurineks' complaint was filed on February 14, 2014, more than thirty days after the mailing date of the decision letter.⁴

The untimely filing of the Jurineks' complaint deprives us of jurisdiction to hear it.⁵ If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.⁶

Summary

We grant the Director's motion for summary decision and dismiss the Jurineks' complaint because it was not timely filed.

SO ORDERED on March 27, 2014.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner

⁴ The Jurineks' complaint, dated February 7, 2014, notes that the decision letter was received on February 3, 2014. Even if this was the date of delivery, the date the decision was mailed is the earlier date.

⁵ *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc 1988), *cert. denied*, 488 U.S. 893 (1988); *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1984).

⁶ *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).